HOYA HOLDING SDN. BHD.

v.

CHIA THIN HING @ CHEAH THIN HENG & ANOR.

HIGH COURT MALAYA, TAIPING
DATO' HJ. ABDUL MALIK B. HJ. ISHAK J.
[CIVIL APPEAL NO. 11-1-94 (T)]
20 AUGUST 1994

CONTRACT: Housing development - Sale and purchase agreement of dwelling house - Terms of agreement - Delivery of vacant possession of house to purchaser "with the connection of water and electricity supply to the said building" - Whether water and electricity must be installed and energized before vacant possession handed over to purchaser.

This was an appeal against the decision of the learned Magistrate, Magistrate's Court, Taiping, wherein the appellant/defendant was ordered to pay RM1,431.51 with interest at the rate of 8% per annum calculated from 2 May 1993 till the date of satisfaction to the respondents/plaintiffs as liquidated damages pursuant to clause 20 of the standard sale and purchase agreement for late delivery of a dwelling house.

Held:

[1] The words in the phrase "with the connection of water and electricity supply to the said building" in their plain and ordinary meaning must mean only one thing and it is this: there must be water and electricity supplies actually running through the internal water pipes, electric lines and power lines in the dwelling house before the question of whether or not vacant possession has been delivered could even be considered.

[2] Malaysian house buyer must surely insist and expect that the handing over of vacant possession of completed houses can only be effected if and only if the water and electricity meters have been installed and energized within the completed houses.

[3] In compliance with clause 20(1) of the standard sale and purchase agreement, the twenty-four (24) months period for delivery of vacant possession of the dwelling house should expire on midnight 31 July 1992 calculated from 1 August 1990. As water and electricity supplies were effected on 24 February 1993 there was therefore a delay of approximately 6 months 23 days calculated from 1 August 1992.

[Appeal dismissed with costs].

Cases referred to:

Sussex Peerage Case [1844] 11 C.X. Fin 85 ***(refd)***
Kon Fatt Kiew v. PP [1935] MLJ 239 ***(refd)***
Syarikat Lean Hup (Liew Brothers) Sdn. Bhd. v. Cheow Chong Thai [1988] 3 MLJ 221 ***(foll)***
Voon Keng & 61 Ors. v. Sykt. Muzwina Development Sdn. Bhd. [1991] 3 CLJ 1904 ***(foll)***
Kandasamy a/1 Sreenivasagam v. Syarikat Muzwina Development Sdn. Bhd. [1990] 1 MLJ 15 ***(refd)***
Charles Muriel (f) v. Newacres Sdn. Bhd. [1994] 2 AMR 23 1145 ***(refd)***

Legislation referred to:
Housing Developers (Control And Licensing) Act 1966, Sch. G
Housing Developers (Control And Licensing) Regulations 1989, Reg. 11(1)
Royal Marriages Act, 1772 (UK)

For the appellant/defendant -Yap Wai Kheong; M/s. W.K. Yap, Loo & Co.
For the respondents/plaintiffs - K.L. Choy; M/s. K.L. Choy & Co.

JUDGMENT

Dato' Hj. Abdul Malik b. Hj. Ishak J:
This is an appeal against the decision of the learned Magistrate, Magistrate's Court, Taiping, Perak wherein the appellant/defendant was ordered to pay RM1,431.51 with interest at the rate of 8% per annum calculated from 26 May 1993 till the date of satisfaction to the respondents/plaintiffs.

The facts were sufficiently set out in the statement of agreed facts that were laid before the learned Magistrate and they were as follows:-

(1) the respondents/plaintiffs by an agreement dated 1 August 1990 had purchased a dwelling house for RM25,000 to be erected on plot no: PT 4630, Mukim of Kamunting, District of Larut and Matang, State of Perak from the appellant/defendant;

(2) by clause 20(1) of the standard sale and purchase agreement, the appellant/defendant had to deliver vacant possession to the respondents/plaintiffs with the connection of water and electricity supply to the dwelling house within 24 calendar months from the date of the agreement;

(3) the physical installation of the water pipe to the dwelling house was completed on or about 2 April 1992;

(4) the physical structure of the building to the dwelling house was completed on or about July 1992;

(5) the physical installation of electrical wirings to the dwelling house was completed on or about 30 July 1992;

(6) the keys to the dwelling house were handed to the respondents/plaintiffs on 3 August 1992 and at that time water pipe and electrical wiring were connected to the dwelling house and this was solely to enable the respondents/plaintiffs to inspect the dwelling house;

(7) the certificate of fitness for occupation dated 2 February 1993 had been issued by the Yang Di Pertua, Majlis Perbandaran Taiping in respect of the dwelling house;

(8) Tenaga Nasional Berhad had received RM60 from the respondents/plaintiffs as deposit vide receipt dated 24 February 1993 for the supply of electricity to the dwelling house;

(9) on 24 February 1993 electricity had been supplied to the dwelling house;

(10) water had been supplied prior to or on 24 February 1993 to the dwelling house; and

(11) the solicitors for the respondents/plaintiffs sent a notice of demand dated 26 May 1993 for RM1,431.51 to the appellant/defendant as compensation payable under clause 20(2) of the agreement.

There is only one nagging issue to be decided by me and that is this: Whether or not water and electricity meters must be installed and energized before vacant possession of the dwelling house can be handed over to the respondents/plaintiffs?

Clause 20 of the standard sale and purchase agreement reads as follows:

> 20 (1) The said building shall be completed by the vendor and vacant possession, with the connection of water and electricity supply to the said building, shall be handed over to the Purchaser within twenty four (24) calendar months from the date of this Agreement.
>
> (2) If the vendor fails to hand over vacant possession of the said building, together with the connection of water and electricity supply to the said building, in time, the vendor shall pay immediately to the purchaser liquidated damages to be calculated from day to day at the rate of ten per centum (10%) per annum of the purchase price.

The phrase "with the connection of water and electricity supply to the said building" appearing in clause 20 of the standard sale and purchase agreement is an exact replica of clause 20 appearing in schedule G of the Hosing Developer (Control And Licensing) Act 1966 in particular Reg. 11(1) of the Housing Developers (Control And Licensing) Regulations 1989. The words in the phrase are by themselves precise and unambiguous and effect must be given to those words in their natural and ordinary sense. In short, this Court needs to do no more than to give effect to those words. Tidal C.J. in *Sussex Peerage Case* [1844] 11 C.X. Fin 85 at page 142 in deciding the question whether the Royal Marriages Act, 1772 extended to marriages celebrated outside England said:

> ..... the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the law giver.

The literal approach of interpretation was also adopted by Cussen J. in *Kon Fatt Kiew v. PP* [1935] MLJ 239 especially at page 240 where his Lordship said:

> This is admittedly not a technical or a scientific definition, so I must give to the words and phrases used their ordinary meaning. If I am in any doubt as to the ordinary meaning of a word, I can consult any standard general dictionary.
>
> I must take the sense, not only of particular words, but of a sentence, or a clause as a whole. When the meaning is plain and certain, that meaning must be given to the language of the Enactment, even though the resulting construction may lead to consequences that are surprising and unexpected, and such as one would think could not have been intended.

In my judgment, the word in the phrase in their plain and ordinary meaning must mean only one thing and it is this: there must be water and electricity supplies actually running through the internal water pipes, electric lines and power lines in the dwelling house before the question of whether or not vacant possession has been delivered could even be considered. Malaysian house buyers must surely insist and

expect that the handing over of vacant possession of completed houses can only be effected if and only if the water and electricity meters have been installed and energized within the completed houses. This seems to be the trend and the thinking of the Malaysian Courts. Thus, in *Syarikat Lean Hup (Liew Brothers) Sdn. Bhd. v. Cheow Chong Thai* [1988] 3 MLJ 221, Mustapha Hussain J. decided that vacant possession had to include the connection of water and electricity supplies to the building and the then Supreme Court upheld this judgment. His Lordship Abdul Malek Ahmad J. in *Voon Keng & 61 Ors. v. Sykt. Muzwina Development Sdn. Bhd.* [1991] 3 CLJ 1904 in the same vein said:

> This would surely mean the connection of electricity from the mains to the internal wiring of a particular house and not when electricity supply is generally available to the relevant housing scheme.

See also *Kandasamy a/1 Sreenivasagam v. Syarikat Muzwina Development Sdn. Bhd.* [1990] 1 MLJ 15 and *Charles Muriel (f) v. Newacres Sdn. Bhd.* [1994] 2 AMR 23: 1145. In compliance with clause 20(1) of the standard sale and purchase agreement, the twenty four (24) months period for delivery of vacant possession of the dwelling house should expire on midnight of 31 July 1992 calculated from 1 August 1990. And since vacant possession must include connection of water and electricity supplies to the dwelling house and such supplies were effected on 24 February 1993, there was therefore a delay of approximately 6 months 23 days calculated from 1 August 1992. But in the statement of claim, the respondents/plaintiffs sought for RM1,431.51 with interest to run from the date of the notice of demand (26 May 1993) that was issued to the appellant/defendant till the date of satisfaction and learned Magistrate acceded to this prayer and gave interest at 8% per annum instead of 10% per annum as stipulated in clause 20(2) of the standard sale and purchase agreement. I do not have any quarrel with the decision of the learned Magistrate and, consequently, I dismissed the appeal with costs.